



POLICE DEPARTMENT

December 22, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Norma Weinstein
Tax Registry No. 926446
45 Precinct
Disciplinary Case No. 86193/10

The above-named member of the Department appeared before the Court on August 17, 2010, charged with the following:

1. Police Officer Norma Weinstein, assigned to the 45th precinct, on or about November 20, 2009 and November 21, 2009, at a residence in Orange County, New York, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Norma Weinstein was involved in a verbal and physical altercation with Neil Weinstein. (*As amended*)

P.G. 203-10 Page. 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Police Officer Norma Weinstein, assigned to the 45th precinct, on or about November 20, 2009 and November 21, 2009, in Orange County, New York, was involved in a verbal and physical altercation with Neil Weinstein and failed to promptly notify the Operations Unit of said incident, as required.

P.G. 212-32, Page 1, Paragraph 1-2 & Note – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE-COMMAND OPERATIONS

3 Said Police Officer Norma Weinstein, assigned to the 45th Precinct, from on or about and between April 27, 2009 and November 19, 2009, in Orange County, New York was involved in verbal and physical altercations with Neil Weinstein and failed to notify the Operations Unit of said incidents, as required

P G 212-32 Page 1, Paragraph 1-2 & Note – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE – COMMAND OPERATIONS

The Department was represented by Scott Rosenberg, Esq Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq

The Respondent, through counsel, entered a plea of Not Guilty to the Specifications A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondent is found Guilty

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Neil Weinstein and Sergeant Robert Olson as witnesses

Neil Weinstein

Neil Weinstein ("Neil") was 46 years old and resided in Chester, Orange County, New York His home was the location of the incident in question He had lived there since June 1999 and currently resided with his fiancé He was a physical therapist and owned his own practice, which had several locations in the metropolitan area

Neil had two children, Ethan and Amilia. The Respondent was Amilia's mother. Ethan was Neil's son with his former wife. Neil and the Respondent were currently separated and in the process of a divorce. They had gotten married on November 30, 2007.

At approximately 11:30 p.m. on November 20, 2009, Neil was at home, lying in bed with the Respondent. The Respondent, her son Justin, and Amilia were also home. Justin was about 13 years old at the time. The Respondent was yelling at Neil about his infidelity. He had previously confessed to her that he had a relationship with another woman.

The Respondent was "using the F word a lot" at Neil. He replied that "enough is enough, end it already, it's over." Neil asserted that the Respondent began hitting him in the back of the head, "probably" with a closed fist because he felt her knuckles. They both got out of bed. The Respondent spit at Neil's face and he spit back at her.

Neil testified that he went into Ethan's bedroom and locked the door "[f]or my own safety." Ethan was not there at the time, he was with his mother. Neil was in there for approximately one hour. The Respondent "unlocked the door somehow" and entered the room. She continued yelling and screaming at Neil. He told her to "just leave me alone already," but she punched him in the back of the head. He ran out of the room and she grabbed and twisted his wrist. Neil felt a little pain "but more shock than anything." Neil admitted that he may have pushed the Respondent out of the way to get out of the room.

Neil asserted that when the Respondent grabbed him in the hallway, she kept cursing at him and punched him three times in the right lower lip and cheek. He grabbed her wrists to prevent her from hitting him, "put her against the wall," and said "enough is enough I'm getting out of here." With the Respondent still cursing and belligerent, Neil ran out of the house. He then went to the Town of Chester Police Department (TCPD) and filed a report. He slept that

night in his office. He bought some clothes the next day at Walmart and did not return home until the Respondent was evicted by the Orange County Sheriff. This was for both legal and safety concerns.

Neil denied threatening or physically attacking the Respondent on November 20 or 21, 2009. He testified that he would never strike a woman. He specifically denied threatening the Respondent that he would have her placed on modified duty status, but he knew that a domestic incident could have repercussions for her job. He asserted that in April 2009, after prior incidents, he went to the TCPD for advice. He told them that his wife had hit him, and he wanted to protect himself, but he didn't want to "get her in trouble with the job." The TCPD officer told Neil to stop telling him what happened because otherwise the police would have to file a report.

Neil testified that between April 27, 2009, and November 19, 2009, there had been "pushing, grabbing, smacking" by the Respondent against him, including grabbing his genitals and buttocks. There was verbal and physical abuse, including instances where the Respondent called him "a cheap Jew" and said he had a small penis. He told her that he wanted her out of his life, and said "what is it going to take you to leave."

On cross-examination, Neil testified that he and the Respondent were married in St. Lucia. He agreed that he gave approximately \$100,000 as a donation to the Church of Scientology from his business funds. He admitted that at one point, the court system told him that he owed \$200 in back child support to the Respondent.

Neil testified that the Respondent's two sons, Jonathan and Justin, came to live with the couple after they got married. Jonathan was about 16 years old at the time and Justin about 12.

Neil admitted that in September 2008, he began having an affair with a per diem contract employee at his practice. The relationship began at work. This was while the Respondent was pregnant with Amilia. Neil agreed that the Respondent "guessed on her own" about the relationship, and Neil told her the truth.

Neil testified that his relationship with the Respondent started going downhill fast before the affair, in August or early September of 2008. He had a non-physical "altercation" with the Respondent and her sons. Neil felt that they were "disrespectful" and told them to leave the home.

Neil testified that after he admitted the extramarital relationship, he wanted to go to counseling, but the Respondent refused. Neil wanted the counseling to be through the Church of Scientology. The Respondent knew he was a Scientologist when they got married, and went with him to the church one time. She was interested in counseling at first and spoke to the chaplain, but after Neil evicted her from the marital home she was interested no longer.

Neil first testified that the Respondent did not belong to any church. He then said that she "might have said her church" as a suggestion for counseling.

Neil testified that Amilia was born a little less than a year before the November 2009 incident.

Neil testified that the Respondent punched him three times in the head while they were in bed. He did not recall whether he stated in an interview with New York City Police Department (NYPD or "Department") investigators that the Respondent punched him before spitting at him (The Advocate stipulated that the transcript of the interview did not mention this). Neil did not recall whether he told the TCPD about the punching prior to the spitting.

Neil's statement in the domestic incident report (DIR see Respondent's Exhibit [RX] A) states that on the night in question, the Respondent was "ir[]ate, yelling (irrational) I went to my son['']s room after she [] scratched me spat at me I locked the door She broke in yelling more¹ punched me 3x in face twisted my arm I left immediate[]ly to police station ' Neil admitted that he did not mention in the DIR that the Respondent punched him while they were in the bed

Neil did not know how the Respondent got into Ethan's locked bedroom He speculated that she picked the lock By locked, he meant only the turning-latch mechanism on the inside part of the door He believed he was sleeping when she came in

Neil said that the Respondent's punches to his face were not "solid " He did not duck or put up his hand He denied grabbing her upper arm Neil testified that he told the Respondent he was leaving and "ran" down the stairs He stated that he was dressed He believed he 'was dressed in my son's room," but did not recall exactly where he got dressed It certainly happened after she spat at him He stated that he never left clothes in Ethan's room

Neil asserted that he asked the TCPD to take pictures of him, but they said it was unnecessary He suffered swelling and bleeding to his lip, but did not require medical attention

Neil testified that he had gone to the TCPD for advice in April 2009 because he was scared He told the Respondent he would "eventually have to call the police," and she responded that "if you do that I'm a cop, I will throw myself down the stairs "

On re-direct examination, when asked why he did not mention in his interview with NYPD investigators that the Respondent punched him in the back of the head while they were in bed together, Neil answered, 'I was just very upset at the whole incident " He did not consider this to be "a serious injury " He did not put it in his DIR statement because he "was there for my face" and "for the end " He did not think it was important, and he was tired at that late hour

¹ Counsel for the Respondent read this as "noise "

Neil stated that he "might have had a pair of pants on. I might have grabbed my pants after she spat on me " He either took clothes and went to Ethan's room, or got dressed before arriving there It was possible that he "threw something on" after putting the Respondent against the wall

Neil contended that the Respondent told him that if he reported any of the abuse, she would make it appear that he hit her first This deterred him from reporting it

Sergeant Robert Olson

Olson had been assigned to the Bronx Investigations Unit He was assigned to investigate the November 20, 2009, incident, along with the duty captain They responded to the Respondent's residence

Olson testified that the Respondent did not "immediately" notify the Operations Unit, as required, of the incident She made no notification until 1420-1430 hours on November 21, 2009 She first made a call to request an emergency excusal, she was scheduled to work a 0705x1540 tour that day

Olson also examined the Operations Unit telephone message log to see if the Respondent made any calls about domestic incidents between April 27, 2009, and November 19, 2009, she did not During the official Department interview with the Respondent, the Respondent admitted to Olson that she had "several" physical altercations with Neil during this time This consisted of "pushing and shoving" by both parties

On cross-examination, Olson stated that the Respondent admitted that she and Neil had "some kind of verbal or physical altercation" about once a month She could not be more specific as to dates or times

Olson agreed that neither Neil nor the Respondent was arrested that evening

Olson did not recall anyone from the TCPD mentioning a prior time where Neil had gone to see them about abuse by the Respondent. He was aware of a document (Court Exhibit [CX] 1) prepared by TCPD concerning a report made by Neil about damage to his property. On April 27, 2009, Neil had alleged that, inter alia, the wires from his lawnmower were cut. As possible suspects, Neil mentioned his stepson, but also a disgruntled former employee named Hector

Olson testified, however, that in the NYPD interview with Neil, the complainant accused the Respondent or her family members of causing the damage. Olson did not recall Neil mentioning Hector during the interview.

As part of the official Department interview process, Olson took photographs of the Respondent. One of these, RX B, shows the Respondent with a prominent roundish bruise on her upper left arm, approximately two to three inches in diameter. Olson testified that she was "emotionally upset" during the interview.

On re-direct examination, Olson stated that the interview of the Respondent took place on November 21, 2009, about twelve hours after the incident.

Olson agreed that Neil's police report to the TCPD about the property damage was prepared not by him but by the police. Neil made this report the same day he informed the Respondent of his infidelity.

Neil told Olson that he grabbed the Respondent in an effort to push her away. Olson did not recall whether Neil specifically mentioned her hands or another part of her body, Neil said they were grappling or whatever. Olson took the photographs contained in Department's Exhibit (DX) 1, which show injuries to Neil's inner lip areas on both the upper and lower portions. The injuries appear to be teeth impacts.

Upon questioning by the Court, Olson testified that the Respondent told him that she had a slight mark on her right hand (see CX 2, photographs)

The Respondent's Case

The Respondent testified on her own behalf

The Respondent

The Respondent testified that she and Neil first met in December 2006 at their children's karate class. They started dating approximately the next month and got married on November 20, 2007, in a ceremony by a Catholic priest on the island of St. Lucia. When they moved in together, she came with her two sons. Neil's son did not live there, but spent time there when Neil had visitation. The Respondent became pregnant in March 2008.

The Respondent testified that before they got married, everyone in the family got along and did things together. But in July 2008, a woman began working for Neil, and his demeanor changed. He became angry and belligerent. The incident described by Neil where he asked the Respondent's family to move out arose when Ethan wanted to play on the family's PlayStation. Jonathan had to study upstairs, so he suggested bringing the machine up and Ethan could play on it up there while the older boy worked. The Respondent testified that Neil "just went ballistic.

He started yelling what the hell, this is my house, my son can go anywhere in this house. you don't respect me." Jonathan asked Neil, "[W]hat is wrong with you? Why you are acting insane?" Neil replied that "if you don't like get the hell out of my house with your mother and your brother."

While the Respondent was pregnant, Neil became distant. He told her he was busy with work. But in October 2008, she confronted him after finding cell phone bills that showed late-night calls to the woman. Neil denied it at first but admitted the relationship in April 2009. After Neil confessed the infidelity, he was angry and irrational. They tried to work things out, and the Respondent suggested counseling. She wanted the counseling to be through the Catholic Church, but he wanted it to be through the Church of Scientology. She suggested a neutral place that they could agree on, but he refused.

On November 20, 2009, the Respondent was trying to talk to Neil. She testified that he kept ignoring her attempts to work things out. That night, she said, Neil told her "I already confessed what else do you want me to do. [G]et over the fucking shit." She started crying. They were both lying in bed when he spit in her face. She spit back, and he left the room. She locked the door. He came back and listened to her for a while, but then left again and locked himself in Ethan's room.

The Respondent had a skeleton key for all the rooms in the house. She opened the door to Ethan's room and continued talking to Neil. He walked away and she tapped him on the arm. He said, "[L]eave me the F alone you spic," and grabbed her neck with his left hand. He also put "a vicious grip" on her left arm with his right hand, and pushed her to the wall. He told her that "there is nothing you can do, what are you going to do, you're a cop." He forcibly kissed her face. Neil then got dressed and left.

The Respondent denied striking Neil at any point. She admitted pushing him off of her when he had his hand around her neck. She used her free hand to push him away with her open palm. She denied using a lot of force, but admitted striking him "somewhere in the face." She did not observe any injury on him and he did not complain of any.

The TCPD responded to the residence and the Respondent spoke to the officers. She also filled out a DIR (RX C). Neither she nor Neil was arrested.

The Respondent agreed that there had been physical contact between her and Neil during prior verbal arguments. She denied that any of these constituted a "physical altercation." While they argued with each other, "he would just push me out of the way or I would push him out of the way just to end the whole verbal dispute." This occurred about once a month. No injuries ever arose and neither of them contacted the police.

The Respondent testified that on the day after the incident, she was scheduled to work a 0705x1540 tour. She called to request an emergency day off ("E-day"), but did not tell the Department that she had been involved in a domestic incident with her husband. She was "in shock" and embarrassed. She "wasn't ready to tell them just what had happened." She later called her command to report the incident, and they told her to contact Operations, which she did.

The Respondent testified that she and Neil were currently in the process of getting divorced. The matter was before Supreme Court in Orange County. The Respondent said that Neil owed her child support for Amilia.

On cross-examination, the Respondent admitted that she said in her official Department interview that she and Neil spit on each other, but she "didn't go into details."

The Respondent testified that she entered Ethan's room less than one minute after Neil went in there. She denied cursing at Neil in Ethan's room. He left the room and she followed, crying and saying, "[W]hy are you just walking away?" She "tapped" him and told him to talk to her. That was that she did not call 911, she asserted that she was embarrassed.

The Respondent denied that the prior incidents between her and Neil were domestic incidents. She denied pushing him. Neil was 'not using both hands, he is just making one gesture with one hand like move out of my way and I would do the same thing just get out of my face and I would continue walking. A push is with two hands." The Respondent admitted stating in her official interview that there had been "pushing and shoving" of Neil, but meant that they were moving each other out of the way. She denied that this was done with force. When the Advocate pointed out that the Respondent never said 'sometimes Neil pushed me or shoved me out of the way," the Respondent answered, "We didn't go into details."

The Respondent conceded that she did not mention in the official Department interview that she locked herself in her bedroom after she and Neil had spit at each other and Neil had left the room.

On re-direct examination, the Respondent stated that she had a scratch on her right hand as a result of the altercation with Neil.

FINDINGS AND ANALYSIS

Specification No. 1

The Respondent is charged with being involved in a verbal and physical altercation with Neil Weinstein. The Respondent and Neil were married but had been having various difficulties. Both described the events of November 20-21, 2009, in similar ways but with important differences.

Neil stated that they were in bed on the night of November 20, 2009, arguing about the marriage. Neil said that the Respondent spit at him and he spit back. He testified that the Respondent punched him three times in the head. Neil got up but she came after him, so he went

into the bedroom of his son, Ethan, to get away from her. Ethan was not home at the time. The Respondent entered Ethan's room. There, Neil stated, she kept berating him and punched him in the face. He grabbed her wrists, told her it was over, and left the home.

In the Respondent's account, it was Neil that spit first, and she spit back. Neil went into Ethan's room and the Respondent came in after him. She wanted to keep talking about their problems and "tapped" him to get his attention. In response, Neil grabbed the Respondent's neck with one hand and her left bicep with the other, squeezing both. The Respondent pushed him off with one hand, striking him somewhere in the face. Neil then left the home.

At the outset, there are several problems with the credibility of Neil. His denial that he grabbed the Respondent's arm and squeezed it was disproven by the photograph, taken the night of the incident by NYPD investigators (RX B), of a fresh black-and-blue bruise on her left bicep. He also failed to mention to investigators that the Respondent punched him in the bedroom, suggesting to the Court that he exaggerated to detract attention from his own actions.

Neil's version also could not explain how or when he got dressed. He stated that he was in his bedclothes, lying in bed, when the Respondent spit at him and punched him. He fled to Ethan's room "[f]or my own safety" and she pursued him. The Respondent hit him again, and he pinned her wrists. He told her it was over and left the house, already dressed. This account, however, left no time period in which Neil would have gotten dressed. He went to Ethan's room for "safety" after the Respondent allegedly attacked him, it does not make sense that he would have gotten dressed first, and then gone to Ethan's room for an hour. He kept no clothing in Ethan's room. After the second part of the encounter, when Neil pinned her wrists, he "just ran out of the house," again for "my own safety."

In the Respondent's version of events, Neil got dressed at the end of the encounter, in a calmer state and certainly not one in which he was fleeing the Respondent for his own safety. The issue of when Neil got dressed is much more important than the Advocate left it on summation, for the simple fact that under Neil's account, in which the Respondent viciously and continuously attacked him, he had no time to get dressed. Yet it is undisputed he was dressed when he left the residence.

A complete assessment of credibility is not necessary, however, for a determination on the first specification because the Respondent's own testimony established her guilty involvement in a physical and verbal altercation. She admitted that when Neil spit at her, she spit back. This was not justified. It was an emotional reaction borne of mutual anger. It was not an assault under the Penal Law because there was no evidence of physical injury, but that does not detract from the fact that it was a physical altercation that she undertook. See Case No 84562/08, signed Sept 1, 2009 (by physically blocking his girlfriend from leaving the room, officer created a physical confrontation, regardless of whether he grabbed her arms).

Accordingly, the Respondent is found Guilty of Specification No 1.

Specification No 2

The Respondent is charged with failing promptly to notify the Operations Unit that she had been involved in a domestic incident. It was about twelve hours later that she did so. In the interim, she called her command to request an E-day from a supervisor. She did not tell her command about the domestic incident.

This gap in time constituted a failure to notify Operations promptly. The Court is mindful of the fact that the Respondent appears to have been mainly the victim here. However,

if she had the wherewithal to call her command and ask for an emergency day off, she had the wherewithal to call Operations and let them know of the incident. as was her responsibility as a member of this Department Accordingly, the Court finds the Respondent Guilty of Specification No 2

Specification No 3

In the third specification, the Respondent is charged with failing to notify Operations of prior domestic incidents The Respondent described these as the kind of pushing and shoving that arose when either she or Neil were arguing about their marital problems If one of them was tired of talking and wanted to leave the conversation, he or she would push the other out of the way with one hand

The Court disagrees with counsel's assertion on summation that these incidents did not arise to the level of mandatory reporting Pushing or shoving a domestic partner in the course of arguments, which often covered the husband's infidelity during the wife's pregnancy, constitutes a physical altercation This was not simply nudging the other out of the way to open the refrigerator or reach the toothpaste These were angry events that included pushing and shoving, and had to be reported to the Department Accordingly, the Court finds the Respondent Guilty of Specification No 3

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974) The Respondent was appointed to the Department on September 28, 2000 Information from her


personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum

The Respondent has been found Guilty of being involved in a physical altercation with her husband and failing to report that incident promptly to the Department. She has also been found Guilty of failing to report prior physical altercations between the couple.

The Court is mindful that while the Respondent has been found Guilty of engaging in a physical altercation with her husband, what she did was minor and not criminal – she spit on him. Later in the incident, however, Neil choked her and squeezed her arm, bruising it badly. She was the main victim of domestic violence here. This also mitigates the penalty that should arise from failing to report the incident promptly. Therefore, the Court recommends that the Respondent forfeit 10 vacation days as a penalty. See Case No 86185/10, signed June 21, 2010 (officer with no prior disciplinary record forfeited 15 vacation days for slamming mother of his child against the wall, throwing her on the bed, and holding her down), Case No 83883/08, signed May 12, 2010 (officer with no prior record received penalty of 12 days for engaging in a domestic incident in which he threw a bowl of cold cereal and gallon of milk over his wife's head in front of their children during a dispute).

APPROVED
JUN 09 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER NORMA WEINSTEIN
TAX REGISTRY NO 926446
DISCIPLINARY CASE NO 86193/10

The Respondent was rated 4 5 “Extremely Competent/Highly Competent” in 2009 In 2007 and 2008, she was rated 3 0 “Competent ” [REDACTED]

For your consideration


David S. Weisel
Assistant Deputy Commissioner – Trials